

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KATHRYN KNOWLTON, DANA McCORMICK,
et al.,

Plaintiffs,

v.

Case No. 2020-CV-01660

CITY OF WAUWATOSA, BARRY WEBER,
DENNIS MCBRIDE, et al.,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS'
MOTION FOR PROTECTIVE ORDER**

Defendants, by their attorneys, Gunta Law Offices, S.C., submit this Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for a Protective Order.

Defendants filed their Motion at the behest of this Court, after two Status Conferences held with the Court and Plaintiffs' Counsel, wherein the parties and the Court discussed the issues surrounding discovery and request that Defendants disclose information that Defendants believed should be subject to a protective order. (*See* Docket Nos. 38-41) After these conferences, and multiple communications between counsel regarding an agreed-upon protective order, the Court ordered Defendants to file a Motion for Protective Order by August 6, 2021 (Docket #41), which the Defendants did (Docket #43). The scope of this Motion was very narrow, covering two areas: identification of confidential informants on social media and information derived therefrom, and police tactical information contained on Drone videos which information is developed in order to

maintain public safety.

Defendants now modify the topic of this motion in two ways: first, Defendants only seek to protect the identification of law enforcement individuals who have an unidentified online presence for use in furthering law enforcement efforts.

Defendants have produced all Drone videos to Plaintiffs. Now, Defendants only seek to maintain very minimal portions of the Drone video footage be designated “For Attorneys Eyes Only,” to allow Defendant City of Wauwatosa to utilize effective law enforcement tactics in possible future incidents, without the possibility of their professional efforts being thwarted by members of the public who become aware of this information through public disclosure.

Plaintiffs are not entitled to and should not be awarded attorneys fees or costs incurred in responding to this motion, as an award of costs and fees under Fed.R.Civ.P. 37 is not applicable, and Defendants’ motion was prepared and filed at the Court’s request and after the parties’ multiple unsuccessful attempts to meet confer and come to an agreement on these two issues.

DISCUSSION

1. Information regarding confidential informant or source.

Defendants modify their request relative to those documents which contain identifying features of a confidential informant, including photos and social media identification such as Twitter handles and Facebook page identities, which sources are used for collecting information to allow the Wauwatosa Police Department to intercept illegal behavior.

Defendants disagree that the applicable “safety threshold” discussed in *Rosario v. United States*, 353 U.S. 53 (1957) is inapplicable because of a distinction between a private citizen

confidential informant and an individual in law enforcement using “fake social media accounts” in an effort to thwart crime. (Plaintiffs’ Memorandum in Opposition at p. 4) This position does not take into account the fact that 60 years has passed from the time *Rosario* was decided, and public sentiment toward law enforcement now has shifted since that time. The reality is that a law enforcement officer being identified while trying to do his job using a tool available to him (the internet), which tool is available to all citizens, most definitely could be a threat to the officer’s personal safety. Plaintiffs are well aware of this possibility, given the dangerous actions which occurred at ex-Wauwatosa Police Officer Mensah’s house, as referenced in the Third Amended Complaint, Docket # 47.

The Defendants’ narrowed request to protect online identity of law enforcement on social media platforms should be granted, and a protective order entered to that effect.

2. Select Drone footage showing law enforcement tactics designed to protect the public.

The Defendants have provided to the Plaintiffs with all Drone footage by copying the same onto a hard drive, paid for by Defense counsel, and sent via certified mail to Plaintiffs’ counsel.

The narrow issue remaining regarding the Drone footage provided is to limit “For Attorneys Eyes Only” those portions of Drone footage showing law enforcement tactics which have been developed for protection of public safety in similar large gatherings.

Defendants of course mean no disrespect by making this modified request, as argued by Plaintiffs (Memorandum in Opposition at p. 7), but rather are cognizant of the specialized knowledge and training that goes into formulating these tactics which are implemented to promote and ensure the safety of the public. Disclosure of this information to the public could undermine this valid law

enforcement goal.

3. Plaintiffs are not entitled to an award of costs or fees.

Plaintiffs request costs and fees under Rule 37 of the Federal Rules of Civil Procedure relative to Defendants' Motion for Protective Order. Plaintiffs are not entitled to any such award, as that rule applies to Court orders on Motions for Order Compelling Disclosure or Discovery. The pending motion is for a protective order, which motion the Court asked that the Defendants prepare and file (Docket #41).

CONCLUSION

The Defendants renew their request for entry of a protective order, as modified by this Reply Memorandum. Defendants will submit a modified Protective Order if the Court deems it appropriate.

Respectfully submitted this 25th day of August, 2021.

GUNTA LAW OFFICES, S.C.
Attorneys for Defendants

/s/ Ann C. Wirth
Gregg J. Gunta, WI Bar No. 1004322
Ann C. Wirth, WI Bar No. 1002469
Jasmyne M. Baynard, WI Bar No. 1099898
Kyle R. Moore, WI Bar No. 1101745
9898 W. Bluemound Road, Suite 2
Wauwatosa, Wisconsin 53226
Telephone: (414) 291-7979
Facsimile: (414) 291-7960
Emails: gjg@guntalaw.com
acw@guntalaw.com
jmb@guntalaw.com
krm@guntalaw.com

